Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES
October Term, 1976

No. 76-536

Pamela Jean Pattison,

Petitioner

v.

Kelly Spratlan,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF TEXAS, TYLER

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To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Pamela Jean Pattison, hereby petitions for a writ of certiorari to review the decision of the Court of Civil Appeals of Texas, Tyler, affirmed as modified by the Supreme Court of Texas, said holding overruling all federal questions, ignoring all related federal decisions, advanced by petitioner, heretofore deemed important by this Honorable Court.

OPINION BELOW

Petitioner would show this Honorable Court that the opinion delivered in the court below herein has been reported in the South Western Reporter, Second Series, Vol. 535 p. 48 and modified in Vol. 539 p. 60

STATEMENT OF JURISDICTION

The judgment sought to be reviewed was made and entered on March 18, 1976. An order overruling a timely filed motion for rehearing was made and entered on April 8, 1976. Application for writ of error in the Supreme Court of Texas was made and entered on May 13, 1976. Writ of error was granted and Per Curiam Opinion delivered July 7, 1976. An order overruling a timely filed motion for rehearing in said Supreme Court of Texas was made and entered on July 21, 1976. This petition for writ of certiorari has been filed in this Court within ninety days thereafter.

The statutory provision believed to confer on this Court jurisdiction to review the judgment in question is 28 U.S.C. Sec. 1257 (3).

QUESTIONS PRESENTED

1. Whether Sec. 15.03 Texas Family Code, Affidavit of Relinquishment of Parental Rights is unconstitutionally vague, indefinite and overbroad, and as used below inconsistent with the due process and equal protection clause of the 14th Amendment to the United States Constitution.

2. Whether denial of statement of facts and imposition of novel procedural requirments, mandamus to obtain same, denied petitioner fair opportunity to raise and develope federal questions in state proceedings consistent with requirements of due process and equal protection clause of the 14th Amendment to the United States Constitution.

CONSTITUTION AND RULES INVOLVED

Amendment XIV, United States Constitution, Section 1 and Texas Rules of Civil Procedure, Rule No. 380

STATEMENT OF THE CASE

This case involves an action to terminate parental rights by the Smith County Office of the Texas Department of Public Welfare. Petitioner, being temporarily unable to provide adequately for her children, sought aid from Respondent, Smith County Office of the Texas Department of Public Welfare. Respondent required Petitioner to execute an Affidavit of Relinquishment of Parental Rights witnessed by Counsel for Petitioner designating Respondent as managing conservator of said children under section 15.03, Chapter 15, Texas Family Code. Respondent brought suit under section 15.02 Chapter 15, Texas Family Code based upon said affidavit of relinquishment obtained from Petitioner. Petitioner appeared by her attorney filing her answer revoking said affidavit asserting duress under oath prior to trial. Trial Court rendered judgment for Respondent. Petitioner duly and timely filed her motion for new trial and the same was overruled

by operation of law. Petitioner made 10 assignments of error in her said motion. Question 1 of this petition challenging the constitutionally of the affidavit (Sec. 15.03 Texas Family Code) was made in assignment of error no. 8, transcript pg. 39 trial court. The question is again raised in Petitioner's (Appellant's Brief), 2nd, 3rd and 5th points of error, pg. 3 in the Court of Civil Appeals, all points were overruled in their judgment #4 of certified record . Petitioner presented same again in her motion for rehearing points 3 and 4 which were overruled. Petitioner presented same again by point of error 3 and 4 in her writ of error to the Supreme Court which affirmed the lower court per curiam opinion #9 certified record. Petitioner reasserted all errors in her motion for rehearing in the Supreme Court of Texas which were overruled #12 certified record. The question was therefore timely and properly raised at every stage of the proceeding giving this court jurisdiction to review the judgment on writ of certiorari.

Question 2 of this petition complaining about the court's failure to furnish petitioner a Statement of Facts which precluded review of all evidence errors inconsistent with the due process and equal protection clauses of the 14th amendment to the U.S. Constitution was raised by petitioner's (Appellant's Brief) 4th point of error. Such error was not required to be raised sooner because same occurred during appeal. Petitioner gave her notice of appeal, filed her affidavit of inability to pay costs, designated the transcript, requested statement of facts from the court (Texas Rules of Civil Procedure, Rule 380 provides for

free statement of facts on appeal for paupers) Counsel for Petitioner when finally able to contact the Official Court Reporter, though employed only 3 weeks had been on vacation until Petitioner's deadline for filing in the Court of Civil Appeals, was informed that no statement of facts would be furnished nor would she sell counsel a statement of facts. Petitioner's counsel prepared an affidavit to this effect in support of motion for extension of time in which to file same requesting the Court of Civil Appeals to order such preparation. Petitioner filed her transcript and brief to preserve her appeal. The Court of Civil Appeals granted the motion for extension of time (#5 certified record) but refused to issue any order as prayed for, pg. 7 Application for Writ of Error #6 certified record and further overruled petitioner's 4th point of error (Appellant's Brief) stating in their judgment #4 certified record that petitioner should have sought a mandamus and therefore did not use due diligence and not therefore entitled to a reversal. The law theretofore had been where petitioner was without fault as contended here only reversal could cure the error. The error was therefore raised at the first opportunity. Petitioner raised the error in her motion for rehearing, point V, #3 certified record which was overruled, #5 certified record; and again raised the error 5th point application for writ of error #6 certified record, affirmed by per curiam opinion #9 certified record. Petitioner reasserted such error in her motion for rehearing on application for writ of error which was overruled #11 and #12 certified record respectively. The question was therefore timely and properly raised

at every stage of the proceeding giving this court jurisdiction to review the judgment on writ of certiorari.

Petitioner would show this Honorable Court that the record of the courts below in this case is under control of the Clerk, Supreme Court of Texas, Box 12248, Capital Station, Austin, Texas 78711.

ARGUMENT

Petitioner recognizes that the state has inherent soverign power and that state action is limited or prohibited, expressly or impliedly by the Constitution. There has been no exclusive grant to the Federal government relative to welfare, but certainly a co-interest exists sufficient to deny the states complete soverignitv. The state is expressly prohibited by "no state shall" sections of the constitution such as the 14th amendment.

The laudable purpose of termination legislation is to provide for voluntary and involuntary severance of the parent-child relationship and for substitution of parental care and supervision through judicial process, while safeguarding the rights and interests of all parties concerned.

Section 15.03, Texas Family Code is an affidavit for voluntary relinquishment of parental rights, the contents of which are specified thereby. The actual petitions for termination are brought under other sections. Section 15.03 will be reproduced in the Appendix. This affidavit replaces the old consent to adoption form and is used by private adoption agencies as well as the state. It is a further attempt to expand civil treatment of children alleg-

edly "requiring judicial supervision" as opposed to the more structured proceedings of juvenile court, where all the safeguards of a criminal proceeding are afforded, and a substantial difference in the burden of proof required of the state. Thusly it is easier to take the parent away from the child than to take the child away from the parent.

Such non-judicial relinquishment confers immediate possessary rights to the child and is subject to the use or non-use of 254 different directors of County Welfare offices and undetermined number of private adoptive agencies without judicial supervision or process and without safeguarding the rights and interests of all parties concerned. The protection from the over-reaching agency with it's long list of suitable adoptive parents waiting for children and the preservation of the family wherever possible is a significant social reason to justify the granting of certitorari by this Honorable Court. The purpose of the state was not acheived by this legislation, rather the serving of the special interests of the adoptive agencies, public and private.

Petitioner recognizes the principles of stare decisis are not binding on this Honorable Court, but considers all Federal decisions and the U.S. Constitution binding on state courts. Thusly petitioner seeks this Honorable Court to fulfill it's role as ultimate arbitrater of disputes, considering the judgment in question contrary to the U.S. Constitution and decisions of this Court.

The questions presented are substantial federal questions upon which the judgment in this case is grounded.

Petitioner, an uneducated, indigent, mother, entitled to the same rights under the constitution as her more educated, affluent counterparts, challenged the constitutionality of the affidavit, stating the same was vague, indefinite and overbroad, specifically excepting to subsections (b)(6) and (b)(8) and other objections. The court generally held the affidavit neither vague nor overbroad, refering to it's lofty purpose rather than to specific objections. The best interest of the children has always been controlling, and the state in order to meet it's burden must prove not presume through affidavit; thusly conflicting with Vlandis v Kline, 412 U.S. 441 (1973). Irrevocable in this case means irrebuttable presumptions disfavored by the 14th Amendment and conflicting with Stanley v Illinois, 405 U.S. 645 (1972). Thusly the way the affidavit was construed and applied below is unconstitutional.

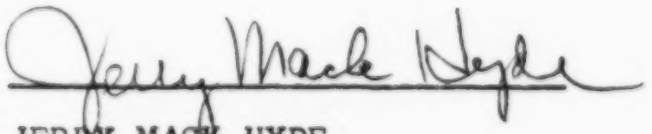
Petitioner was further prevented by the denial to her of a statement of facts from showing that which was presumed by the state, that she was required to execute the affidavit before aid was extended, that she proved her defense of duress; thusly preventing her from adequately presenting the federal questions involved. She was entitled to said statement of facts under Rule 380 Texas Rules of Civil Procedure; she offered her affidavit that she could not obtain one free or even buy one in the Court of Civil Appeals in support of her motion for extension of time, even praying for an order to compel production of same. Clearly she was free from fault. Theretofore on appeal she would be entitled to a reversal. The Court however

changed the rules, analgous to NAACP v Alabama, 357 U.S. 449 (1958) required Petitioner to seek mandamus. Although this is a civil case, the rights of indigents in Griffin v Illinois, 351 U.S. 12 (1956) and Mayer v Chicago, 404 U.S.189 (1971) should apply. Petitioner certainly made out a colorable need and had a right to present her case regardless of her ability to pay. No condition precedent to the receiving of aid or welfare, such as the execution of such relinquishment affidavit, as taints this case should be allowed to stand before this Honorable Court.

CONCLUSION

Petitioner contends that said affidavit is unconstitutional and urges this Court to grant certiorari and so declare same, or in the alternative to find the way same was construed and applied below unconstitutional and reverse the judgment below on her application.

Respectfully submitted,

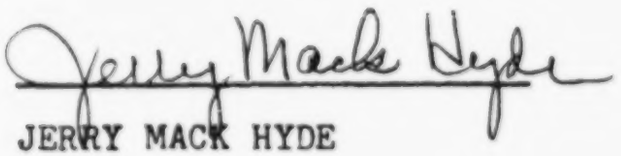


JERRY MACK HYDE
P.O. Box 188
Tyler, Texas 75710

Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney of record for petitioner hereby certifies that a true copy hereof was served upon all parties required to be served by depositing the same in the United States Post Office at Tyler, Texas, as prepaid first class certified mail, addressed to Mr. George Conner III, Assistant District Attorney, Attorney for Respondent, Smith County Courthouse, Room 403, Tyler, Texas 75701, on the 15th day of October, 1976.



JERRY MACK HYDE

APPENDIX

APPENDIX "A"

Judgment rendered by the Court of Civil Appeals for the Twelfth Supreme Judicial District of Texas, at Tyler, reading as follows:

"Pamela Jean Pattison, Appellant vs. Kelly Spratlan, Appellee, No. 887 Appeal from the Court of Domestic Relations of Smith County, Texas.

This is an appeal from a decree of the Smith County Court of Domestic Relations terminating the parent-child relationship.

Appellee, Kelly Spratlan, instituted suit against appellant, Pamela Jean Pattison, to terminate the parent-child relationship between appellant and her minor children pursuant to Sec. 15.02(I), Texas Family Code. As grounds for termination appellee alleged that appellant had executed an irrevocable affidavit of relinquishment of parental rights as provided in Sec. 15.03 of the Code. The affidavit of relinquishment signed by appellant was attached to appellee's petition. Appellant answered alleging that the affidavit was signed under duress and therefore void. She alleged that at the time she signed the affidavit of relinquishment she was unable to provide support for her children and went to the Smith County Department of Welfare seeking financial aid and that the Department required her to execute the relinquishment affidavit before such agency would take such children or render any help or aid to her.

After a trial before the court without a jury, the trial court found that appellant executed the affidavit of relinquishment of parental rights in accordance with Sec.

15.03 of the Code. The court further found that termination of appellant's parental rights would be in the best interest of the minor children and accordingly terminated the parent-child relationship and appointed appellee, Kelly Spratlan as managing conservator of the children. Appellant has perfected this appeal and brings forward five points of error.

By her first point appellant complains that the trial court erred in rendering judgment against her on the basis of the affidavit of relinquishment of parental rights because she contends the relinquishment affidavit was revoked by her prior to trial.

The record is before us by way of transcript only. There is no statement of facts nor findings of fact and conclusions of law. Without a statement of facts we do not know what the testimony was and therefore we are unable to determine whether appellant actually revoked the affidavit prior to trial. There is nothing in the record, other than appellant's allegations in her answer, tending to show appellant desired to revoke the relinquishment affidavit. Section 15.03(d), Texas Family Code, provides that an affidavit of relinquishment of parental rights which designates the State Department of Public Welfare as the managing conservator of the children is irrevocable. Appellant having executed the relinquishment affidavit designating the Tyler-Smith County Child Welfare Unit as managing conservator, the affidavit was not revocable at the will of appellant because of the last cited section of the Family Code. The decree of termination recites that evidence was heard and finds that appellant executed the irrevocable affidavit. In the absence of a statement

of facts showing duress, we must presume in support of the judgment that appellant failed to establish her defense of duress. Goodin v. Geller, 521 S.W.2d 158, 159 (Tex. Civ.App.-Waco 1975, writ ref'd n.r.e.); McGlothlin v. Burkett,518 S.W.2d 252, 253 (Tex.Civ.App. -Eastland 1974, no writ). Accordingly, appellant's first point is overruled.

Appellant contends by her second point that Sec. 15.03, Texas Family Code, is unconstitutionally vague and overbroad. This contention is without merit. Section 15.03 prescribes the contents of the affidavit to be executed by the relinquishing parent. The section requires that the affidavit of relinquishment contain basic information about the children, parents and their respective circumstances. The information required is extensive in order for the court to be assured that the parent is aware of the nature of the relinquishment of parental rights. See generally, 5 Tex.Tech Law Review, Commentary, 441-444 (1974). This section is neither vague nor overbroad.

Appellant's third point contends that Section 15.03 is contrary to State and Federal welfare laws. This point is overruled. The statute is not connected, in any way, with State or Federal welfare laws. Insofar as we are able to determine, there is nothing in the section which could be construed to be conflicting with State or Federal welfare laws, nor does the record reveal that the trial court applied the section in a manner contrary to the State or Federal welfare laws.

By her final points appellant complains that the court erred in failing to order the preparation of the statement of facts based upon her affidavit of inability to

These points must likewise be overruled. The record fails to show that the affidavit of inability to pay cost was presented to the trial court and there is nothing to show that the trial court failed or refused to rule on her request. Thus, appellant must be held to have waived her right to complain. If the trial court did, in fact, fail or refuse to rule on the matter, appellant's remedy was by way of mandamus. Upon the failure or refusal of the trial court to order the preparation of the statement of facts appellant had a right to seek a writ of mandamus from this court to compel the trial court to order the preparation of the statement of facts. Having failed to seek a writ of mandamus requiring the preparation of the statement of facts, appellant failed to use due diligence and is thus not entitled to a reversal. Scott v. Harris, 52 S.W. 2d 286, (Tex.Civ.App. -El Paso 1932, no writ); Jenkins v. Jenkins, 50 S.W.2d 342 (Tex.Civ.App. -Texarkana 1932, writ dism'd).

The judgment of the trial court is affirmed.

JAMES H. MOORE
Associate Justice

Opinion delivered March 18, 1976.

March 18, 1976 Judgment 887 Pamela Jean Pattison vs. Kelly Spratlan-Appeal from Domestic Relations Court of Smith County

This cause came on to be heard on the transcript of the record; and the same being inspected, it is the opinion of the Court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the Court below be in all things affirmed; that the Appellee, Kelly Spratlan, recover of and

from the appellant, Pamela Jean Pattison, all costs in this behalf expended, both in this Court and the Court below for all of which execution may issue, and that this decision be certified to the court below for observance."

APPENDIX "B"

Judgment rendered by the Supreme Court of Texas, reading as follows:

In The Supreme Court of Texas No. B-6014 Pamela Jean Pattison, Petitioner v. Kelly Spratlan, Respondent from Smith County Twelfth District, PER CURIAM

"This was a suit filed by Kelly Spratlan, Supervisor of Welfare of Smith County, against Pamela Jean Pattison to terminate the parent-child relationship between Pattison and her three children. The trial court has terminated the parent-child relationship under Article 15.02(1)(k) and (2) of the Family Code. The Court of Civil Appeals has affirmed and assessed all costs against Pattison. 535 S.W.2d 48. An affidavit of inability to pay costs on appeal was filed by Pattison in the trial court. Since no contest was filed to this affidavit under Rule 355(e), Texas Rules of Civil Procedure, the allegations in it are taken as true and the Court of Civil Appeals erred in assessing appeals costs against Pattison. Pursuant to Rule 483, Texas Rules of Civil Procedure, the application for writ of error is granted and, without hearing argument, the judgment of the Court of Civil Appeals is modified so as to strike out any assessment of appeals costs against Pattison. Otherwise, the judgment is affirmed as modified. Opinion delivered: July 7, 1976.

APPENDIX "C"

Section 15.03 , Texas Family Code Affidavit of Relinquishment of Parental Rights:

(a) An affidavit for voluntary relinquishment of parental rights must be signed by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and acknowledged before any person authorized to take oaths.

(b) The affidavit must contain:

(1) the name,address, and age of the parent whose parental rights are being relinquished;

(2) the name,age, and birthdate of the child;

(3) the names and addresses of the guardians of the person and estate of the child, if any;

(4) a statement that the affiant is or is not presently obligated by court order to make payments for the support of the child;

(5) a full description and statement of value of all property owned or possessed by the child;

(6) Allegations that termination of the parent-child relationship is in the best interest of the child;

(7) one of the following, as applicable:

(A) the name and address of the other parent;

(B) a statement that the parental rights of the other parent have been terminated by death or court order; or

(C) a statement that the child is not the legitimate child of the father and that an affidavit of status of child has been executed as provided by section 15.04 of this code;

(8) a statement that the parent has been informed of his parental rights, powers, duties, and privileges; and

(9) a statement that the relinquishment is revocable, or that the relinquishment is irrevocable, or that the relinquishment is irrevocable for a stated period of time.

(c) The affidavit may contain:

(1) a desigination of any qualified person, the State Department of Public Welfare, or any authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under sec. 15.02(1)(G) of this code, or in a suit to terminate joined with a petition for adoption under sec. 16.03(e) of this code, for the period during which the affidavit is irrevocable; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

(d) An affidavit of relinquishment of parental rights which designates as the managing conservator of the child the State Department of Public Welfare or an agency authorized by the State Department of Public Welfare to place children for adoption is irrevocable. Any other affidavit of relinquishment is revocable unless it expressly provides that it is irrevocable for a stated period of time not to exceed 60 days after the date of execution.

APPENDIX"D"

Texas Rules of Civil Procedure Rule 380: Free Statement of Facts on Appeal for Paupers

In any case where the appellant has made

the proof required to appeal his case without bond, the court or judge upon application of appellant shall order the official reporter to make a transcript in narrative form, in duplicate, and to deliver the same to said party, but said reporter shall receive no pay for same.

APPENDIX "E"

Constitution of the United States of American, Amemdment 14, Sec. 1, reading as follows:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX "F"

Title 28 United States Code, Sec. 1257 (3), reading as follows:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed

under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

APPENDIX "G"

Notice of judgment of Court of civil Appeals, April 8: Appellant's Motion for Rehearing and Additional Findings having been duly considered, it is ordered that said motion be, and hereby is, overruled. Motion Docket No. 2058

Respectfully yours,
Barbara A. Holman, Clerk

APPENDIX "H"

Clerk's Office-Supreme Court July 21, 1976 Austin, Texas Dear Sir:
You are hereby notified that the Motion for Rehearing in the case of Pamela Jean Pattison vs. Kelly Spratlan, No. B-6014 was this day overruled.

Very truly yours,
Garson R. Jackson,Clerk